

INDUSTRIAL MEDICAL COUNCIL
DEPARTMENT OF INDUSTRIAL RELATIONS
INITIAL STATEMENT OF REASONS
FOR PROPOSED ACTION TO ADOPT AND AMEND
CALIFORNIA CODE OF REGULATIONS, TITLE 8, CHAPTER 1
SECTIONS 18 and 66

TITLE 8. Industrial Medical Council

The IMC proposes to amend section 18, and to adopt section 66.

Section 18.

This section provides for the time at which fees are to be paid by QME's. In the regulations currently proposed under another Notice, the section was rewritten for clarity, deleting unnecessary language. A requirement that QME's whose status had lapsed for more than two years would have to meet current requirements for eligibility and retake the report writing class was added in paragraph (c).

This Statement of Reasons covers only the additional proposed change, which is the addition of new paragraph (d). The problem addressed is how to treat Qualified Medical Evaluators (QME's) who have let their QME status lapse by either not paying their annual fee or by not applying for reappointment by their anniversary date.

Labor Code 139.2 (d) spells out the criteria for being reappointed as a QME. In relevant part, section (3) states that the QME must have completed 12 hours of Continuing Education (CE) within the previous 24 months. Title 8, Chapter 1, Section 55 discusses the issue of CE, how many hours are required and within what time frame. There it is stated that the 12 units must be within 24 months of the QME's term of appointment. This means that the QME requesting reap-

pointment must have completed the 12 hours of CE by the time his or her appointment period has ended. A past practice, no longer followed, had been to allow the QME to submit CE hours that were not obtained during the appointment period, but hours obtained after the appointment period had expired, as long as it was within two years of the expiration of the appointment period. This was based on paragraphs (b) and (c) which give the deadlines for the payment of fees, and state that if the fee is not paid within two years, the QME must start over by taking the examination and the report writing class. It doesn't say anything about an extension of the time frame for getting CE hours. The QME must be otherwise qualified in order for the provisions of paragraph (b) to apply.

A second past practice, also no longer followed, had been the resetting of the appointment period whenever there was a lapse in appointment. This had the result of allowing QME's coming back into the system after a lapse in appointment to avoid taking all the CE hours that QME's who held continuing appointments had to take. This was unfair and contrary to the intent of Labor Code section 139.2.

The IMC has decided that when there has been a lapse in the appointment period, but the QME comes back within two years per paragraph (b), when submitting the reappointment application the QME must: (a) either have 12 hours of appropriate CE within 24 months of the previous appointment period or show 12 hours of recent CE; (b) have an additional 12 hours of CE by the end of the current appointment period; and (c) pay the fee within two years of the previous appointment period. The proposed paragraph (d) establishes this. Appointment periods would never be reset under this regulation. Once appointed, a physician would remain on the same two-year cycle regardless of whether or not there is a lapse.

Section 66.

This new section provides for a definition of "a crime of moral turpitude" for purposes of Labor Code section 139.2. Labor Code section 139.2 (m) provides that the IMC shall terminate the QME status any physician whose license to practice has been terminated, who has been convicted of a misdemeanor or felony related to the conduct of medical practice, or who has been convicted "of a crime of moral turpitude." As termination is the most severe sanction the IMC can impose, it should always be based on clearly defined transgressions. The words "moral turpitude have" have different meanings dependent upon the context. As California Supreme Court Justice Trobriner once wrote in a decision, "Terms such as immoral or unprofessional conduct or 'moral turpitude' stretch over so wide a range that they embrace an unlimited area of conduct." *Morrison v State Bd. of Education*, 1 Cal3d 214, 224. In the legal sense, a crime may be seen to be a crime of moral turpitude for some legal purposes but not others. The IMC found that it was important to define precisely what was a "crime of moral turpitude" for purposes of termination under Labor Code section 139.2. Traditionally, crimes of moral turpitude have been crimes of dishonesty and crimes which involve readiness to do evil, and not crimes of battery. The California Supreme Court has not rendered an opinion on what constitutes a crime of moral turpitude for purposes of medical evaluators. A long standing defining phrase used by the California Supreme Court in discussing whether evidence of a past crime may be admitted into evidence to impeach someone's testimony, (originally penned by Justice Oliver Wendell Holmes of the United States Supreme Court) is "a readiness to do evil."

The IMC found, that for purposes of Labor Code section 139.2, a "crime of moral turpitude" does not include Penal Code section 273.5, crimes of battery against a spouse, or crimes of battery generally, except for a crime of battery against a child; a crime of moral turpitude would be a crime of dishonesty or a crime in which the perpetrator expressed a general readiness to do evil. Although excluding crimes of battery generally, it found that battery against a child, meaning a child of tender years, so morally depraved as to require its inclusion among crimes of moral turpitude.